

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA DIVISION** NOV 24 2021

*(Write the District and Division, if any, of
the court in which the complaint is filed.)*

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY Alm
DEPUTY CLERK

Rogers, Kim Edward, Pro Se

*(Write the full name of each plaintiff who is filing
this complaint. If the names of all the plaintiffs
cannot fit in the space above, please write "see
attached" in the space and attach an additional
page with the full list of names.)*

~~against~~

GAVIN NEWSOME, GOVERNOR OF
CALIFORNIA; ROB BONTA, ATTORNEY
GENERAL OF CALIFORNIA

*(Write the full name of each defendant who is
being sued. If the names of all the defendants
cannot fit in the space above, please write "see
attached" in the space and attach an additional
page with the full list of names. Do not include
addresses here.)*

**Complaint for Violation of Civil
Rights**

(Non-Prisoner Complaint)

Case No. 2:21-CV-2180-KJM DB PS
(to be filled in by the Clerk's Office)

Jury Trial: ☐ Yes ☒ No
(check one)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in *forma pauperis*.

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Rogers, Kim Edward
Street Address	2072 50 th Avenue
City and County	Sacramento, Sacramento
State and Zip Code	California 95822
Telephone Number	
E-mail Address	

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, ~~whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both.~~ Attach additional pages if needed.

Defendant No. 1

Name	GAVIN NEWSOME
Job or Title	GOVERNOR OF CALIFORNIA
Street Address	1303 10 th STREET, SUITE 1173
City and County	SACRAMENTO, SACRAMENTO
State and Zip Code	CALIFORNIA 95814
Telephone Number	916-445-2841
E-mail Address	

☐ Individual capacity ☒ Official capacity

Defendant No. 2

Name	ROB BONTA
Job or Title	ATTORNEY GENERAL OF CALIFORNIA
Street Address	1300 I STREET
City and County	SACRAMENTO, SACRAMENTO

~~State and Zip Code~~ CALIFORNIA 95814-2919

Telephone Number 916-445-9555

E-mail Address

☐ Individual capacity ☒ Official capacity

Defendant No. 3

Name

Job or Title

Street Address

~~City and County~~

State and Zip Code

Telephone Number

E-mail Address

☐ Individual capacity ☐ Official capacity

Defendant No. 4

Name

Job or Title

~~Street Address~~

City and County

State and Zip Code

Telephone Number

~~E-mail Address~~

☐ Individual capacity ☐ Official capacity

Defendant No. 5

Name

Job or Title

Street Address

~~City and County~~

State and Zip Code

Telephone Number

E-mail Address

☐ Individual capacity ☐ Official capacity

Defendant No. 6

Name

Job or Title

Street Address

~~City and County~~

State and Zip Code

Telephone Number

E-mail Address

☐ Individual capacity

☐ Official capacity

Defendant No. 7

Name

Job or Title

~~Street Address~~

City and County

State and Zip Code

Telephone Number

~~E-mail Address~~

☐ Individual capacity

☐ Official capacity

Defendant No. 8

Name

Job or Title

Street Address

~~City and County~~

State and Zip Code

Telephone Number

E-mail Address

☐ Individual capacity

☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), ~~you may sue federal officials for the violation of certain constitutional rights.~~

A. Are you bringing suit against(*check all that apply*):

- ☐ Federal officials (a *Bivens* claim)
☒ ~~State or local officials (a § 1983 claim)~~

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) ~~do you claim is/are being violated by state or local officials?~~

Social Security Act §§ 1902(a)(10)(E)(i), 1905(p)(3), (p)(3)(A)(ii), (p)(3)(C,D) as amended 42 U.S.C.A. §§ 1396a(a)(10)(E)(i), (n), 1396d(p)(3), (p)(3)(A)(ii), (p)(3)(C, D).

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) ~~do you claim is/are being violated by federal officials?~~

N/A

D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State ~~or Territory or the District of Columbia.~~” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Plaintiff is seeking a declaration that the State of California Medicaid Plan violates the Medicare Act and the Medicaid Act by limitation on payment of Medicare B premiums for qualified Medicare beneficiaries that violates both statutes under the color of law.

III Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. Where did the events giving rise to your claim(s) occur?

City and County of Sacramento

B. What date and approximate time did the events giving rise to your claim(s) occur?

October 3, 2017 and tolling

C. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*

Plaintiff brings 42 U.S.C. § 1983, alleging that the State of California Medicaid plan violates Medicare and Medicare Acts by limiting payments on behalf of qualified Medicare beneficiaries (QMBs) under Medicare Part B. The State of California violated Medicare Act and the buy-in provisions of Medicaid Act by eliminating payment of Medicare B premiums, deductibles, and coinsurance of qualified Medicare beneficiaries. Buy-in provisions of Medicaid Act do not permit California to limit cost-sharing payments to qualified Medicare beneficiaries under Part B to extent that its payment plus Part B payment does not exceed Medicaid payment that would otherwise be payable under Medicaid plan, since the statute lists Part B premiums, deductibles, and 20% coinsurance as part of scope of payment obligation. States that participate in Medicaid must allocate Medicaid funds to enrollment of all dual eligible and qualified Medicare beneficiaries in Part B of Medicare and to payment of 20% of reasonable costs or charges along with annual deductibles incurred in the program. Under the Medicaid Act, a state participating in the Medicaid program must pay certain cost-sharing expenses for qualified Medicare beneficiaries in order to make those QMBs eligible for certain Medicare benefits under Part B.

IV. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Plaintiff, who at the time was eligible under the statute, was forced to withdraw from the Social Security Medicare B program in October 2017 due to the costs incurred under the program. Plaintiff was eligible for the qualified Medicare beneficiary because his income was below the certain level required at the time.

V. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I am asking for the nominal monetary damages guaranteed to Kim Edward Rogers under 42 U.S.C. § 1983. The State of California reinstate the qualified Medicare beneficiary program payments to Plaintiff. I would ask for some injunctive oversight by the Court on the State of California's Medicaid program.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my ~~knowledge, information, and belief that this complaint:~~ (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have ~~evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery;~~ and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

~~Date of signing:~~ November 24, 2021.

Signature of Plaintiff Rogers, Kim Edward

Printed Name of Plaintiff Rogers, Kim Edward

B. For Attorneys

Date of signing: _____, 20__.

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Address _____

Telephone Number _____

E-mail Address _____